

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID**

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 24620 of 2007(E)

PETITIONER:

**HARI JOSEPH, S/O. THOMAS AGED 54,
VETHUSSERY, CHERANELLOOR VILLAGE,
VADUTHALLA P.O.,**

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

- 1. COMMISSIONER OF POLICE,
KOCHI CITY,ERNAKULAM.**
- 2. SUB INSPECTOR OF POLICE,
ERNAKULAM TOWN NORTH POLICE STATION,
ERNAKULAM.**
- 3. M.C.THOMAS,
MACHUVEETIL HOUSE,
CHERANELLOOR.**

**BY GOVERNMENT PLEADER SRI. SALIM P.A for R1 & R2
BY ADV. SRI. D. KRISHNAPRASAD for R3**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K.BALAKRISHNAN NAIR &
HARUN-UL-RASHID, JJ.

W.P.(C) No.24620 of 2007-E

Dated 18th August, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner has approached this Court, seeking the following relief:

“(i) issue a writ of mandamus or other writ order or direction, compelling the respondents 2 and 3 to ensure adequate and sufficient protection to the petitioner in enforcing Ext.P1 decree.”

2. There was some dispute between the petitioner and the 3rd respondent regarding a pathway to his property, which passes through the 3rd respondent's property. The petitioner submits, the said dispute is now finally settled by the civil court. Ext.P1 is the judgment of the trial court, which was affirmed in appeal by the appellate court also. The petitioner also points out that a Second Appeal attempted against the judgment of the first appellate court is also dismissed. So, the petitioner is entitled to get the pathway in terms of Ext.P1 decree, as clarified in Ext.P2. But, the 3rd respondent is causing obstruction,

when he is trying to use the pathway and clear the bushes growing in it. The police was moved for help. When it was of no avail, this writ petition was filed, seeking the above quoted relief.

3. The learned Government Pleader, upon instructions, submitted that the 2nd respondent called both the parties and directed them to respect the judgment of the civil court. The learned counsel for the 3rd respondent submitted that under the guise of implementing the decree, the petitioner is trying to widen the pathway. It is also submitted that he has no objection in the petitioner using the pathway, as provided in the decree and identified by the Advocate Commissioner. He also points out that the Second Appeal was filed by the petitioner's predecessor-in-interest and it was dismissed for default. Now, the petitioner has filed an application to restore the same. So, the learned counsel for the 3rd respondent submits that the said respondent will abide by the decree of the civil court, subject to his rights in the Second Appeal.

4. To avoid the dispute between the parties regarding the width of the pathway, the 3rd respondent may mark the pathway in terms of the decree and the Commissioner's report, in his property within one week

from today, so that the petitioner can use it freely. If the petitioner has got any dispute regarding the width of the pathway, as marked by the 3rd respondent, he has to move the executing court for appropriate reliefs. The police shall ensure that peace is maintained and the dispute does not lead to any law and order problem. We feel that in view of the directions already issued, there will be no occasion for any breach of peace.

The Writ Petition is disposed of as above.

K. BALAKRISHNAN NAIR, JUDGE .

HARUN-UL-RASHID , JUDGE .

nm.